

FOCUS

Analysis, Commentary and Updates on Legislative and Policy Issues that Affect California Cities

June 10, 2005
Issue #23-2005

BUDGET UPDATE

The Budget Conference Committee is close to completing its work and may shut down today. At press time, there had been no action to resolve the difference between the Senate and Assembly on the \$593.4 million appropriation proposed by Gov. Schwarzenegger and adopted in the Senate to provide early repayment of about half of the \$1.1 billion vehicle license fee (VLF) gap loan that the state took from cities and counties in 2003. The Assembly did not take this item up in the budget subcommittee, which placed the item in conference. *For more, see Page 8.*

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LOCAL OFFICIALS CONTINUE THE PUSH FOR FULL PROP. 42 FUNDING

City and county officials in San Diego, Santa Barbara, Modesto, and Monterey held press conferences with business and labor representatives and other LOCAL (Leave Our Community Assets Local) Coalition partners this week, stressing the importance of preserving full funding of Proposition 42 transportation projects in the FY 2005-06 state budget. *For more, see Page 5.*

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TELECOMMUNICATIONS REGULATORY CHANGES IN CALIFORNIA'S FUTURE

Local regulation of telecommunications providers is about to face a major change.

This change is going to occur, and arguably needs to occur, because of the phenomenal technological advances in the communications industry that provides video, voice, and data services to our local communities. In turn, this technological revolution is going to change the manner in which local communities regulate these services. *For more, see Page 6.*

WANT MORE DETAILS ON BILLS?

Visit the League of
California Cities
website at
[www.cacities.org/
billsearch](http://www.cacities.org/billsearch)

IN THIS ISSUE:

- Page 2 LEAGUE CLARIFIES SPENDING CAP INITIATIVE
 - INTERESTED IN SERVING ON THE LEAGUE BOARD OF DIRECTORS?
- Page 3 U.S. SUPREME COURT JUST SAYS NO
 - POLLING AND PUBLIC OPINION—A ONE TO ONE RELATIONSHIP?
- Page 4 LEGISLATIVE BILL SUMMARIES

LEAGUE CLARIFIES REVIEW PROCESS ON PROPOSED SPENDING CAP INITIATIVE

League Executive Director Chris McKenzie distributed a memo this week to all cities to clarify that the League has not yet taken a position on Gov. Arnold Schwarzenegger's proposed spending cap initiative known as "Live Within Your Means."

The memo was distributed following publication of a *Los Angeles Times* article entitled "Cities and Counties Balk at Plan for State Spending Cap" which stated that cities and counties have serious concerns with the measure.

The measure has not yet qualified for the ballot. Assuming that it does qualify, it is expected to be placed on the November 8 ballot - if the governor calls a special election for this fall.

County officials are quoted in the story, but no League representative or city official was quoted as expressing concerns.

We anticipated that the story might lead to city officials being asked about the measure by their own local media, said McKenzie. We thought it would be helpful if city officials had information on where the League was in analyzing the proposal.

The memo made the following points about the measure and the League's review process:

- The League, the California State Association of Counties and the LOCAL Coalition **have not** taken positions on the Live Within Our Means Act.
- League attorneys, our fiscal consultant and other experts are carefully reviewing this initiative and we're working with the various parties involved to get answers to some questions and policy issues. We will not take a position until their analysis is complete and after we have taken this item through the League's policy process, the Revenue and Taxation Policy Committee for recommendation and subsequently the board of directors for its review of the policy committee position and adoption of a final position. We cannot predict what our position will be on the

measure until this process runs its course.

- Our analysis thus far has indicated that the spending cap measure does not affect local Prop 172 funding (sales tax for public safety). We also **support** provisions that would prevent the Legislature in future years from transferring Prop 42 funds (sales tax on gasoline) to the state general fund - and away from transportation projects including funds to cities and counties for local street and road maintenance projects.

- Gov. Schwarzenegger has been a great ally of local government in both the recent past and in the present. He helped push through the historic landslide passage of Proposition 1A and his May Budget Revision proposal (to fully fund Prop 42 and provide early repayment of half of the 2003 vehicle license fee loan) also reflects his commitment to local governments and local services. We value this partnership and the governor's ongoing support for local services.

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INTERESTED IN SERVING ON THE LEAGUE BOARD OF DIRECTORS?

The League of California Cities welcomes nominations from elected officials interested in serving in **five** at-large positions (two-year term) or Second Vice President (one-year term). All nominees for Second Vice President must currently be serving or have previously served on the board of directors.

If you are interested in submitting your name (or another elected official's name) for nomination to the League board of directors, please provide the information requested on the Nomination Form along with a bio and letter requesting consideration to the League's Sacramento headquarters on or before end of business on **Friday, July 8, 2005**. Nomination materials can be found on the League's Website at www.cacities.org in the board of directors section or can be obtained by contacting League staff member Mimi Sharpe at (916) 658-8232 or sharpem@cacities.org.

U S SUPREME COURT JUST SAYS 'NO'

On June 6 2005 the United States Supreme Court handed down its long-awaited decision in *Gonzales v Raich*. The Court held that those using marijuana for medicinal purposes could be prosecuted for violating federal drug laws. While expressing sympathy for the two seriously ill California women who brought the lawsuit the Court found that Congress has the authority to prohibit the local cultivation and use of marijuana.

California's Compassionate Use Act authorizes limited marijuana use for medicinal purposes. After federal agents seized and destroyed all six of Diane Monson's plants she and Angel Raich brought an action seeking to prohibit the enforcement of the federal Controlled Substances Act to the extent that it interfered with their use of marijuana under California law. Essentially they argued that a locally grown product that is used domestically rather than sold on the open market is not subject to federal regulation.

The Ninth Circuit Court of Appeals sided with the women finding that Congress lacked the power to regulate the intrastate noncommercial cultivation and possession of marijuana pursuant to valid California law. But the Supreme Court disagreed.

In its 6-3 opinion the Court reiterated that Congress has the power to regulate purely local activities that are part of an economic class of activities that have a substantial effect on interstate commerce. Congress may constitutionally regulate the local production of marijuana because such production has a substantial effect on the supply and demand for marijuana in the national market. Because of enforcement difficulties in distinguishing between locally grown marijuana and that grown elsewhere along with concerns about diversion to illicit markets Congress had a rational basis in believing that local regulation was an essential part of the larger regulatory scheme set out in the Controlled Substances Act.

In her dissent Justice Sandra Day O'Connor joined by Chief Justice William Rehnquist and Justice Clarence Thomas stated that the Court was overreaching in making it a federal crime to grow small amounts of marijuana in one's home for one's own medicinal use. Justice Thomas added

that the majority's ruling was so broad the federal government may now regulate quilting bees clothes drives and potluck suppers throughout the 50 states.

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POLLING AND PUBLIC OPINION—A ONE-TO-ONE RELATIONSHIP?

Public officials frequently look to public opinion polls as a reliable indicator of public sentiment. But is it reliable? Under what circumstances could polls be misleading?

Come find out at the Institute for Local Government's first ever luncheon symposium at the upcoming League Annual Conference. This year's symposium will feature Daniel Yankelovich a leading interpreter of trends shaping American society. Mr. Yankelovich is the author of 10 books including *Coming to Public Judgment*, *New Rules*, and *The Magic of Dialogue: Transforming Conflict into Cooperation*. To learn more about Mr. Yankelovich check out his interview with Bill Moyers at www.pbs.org/now/transcript/transcript_yankelovich.html.

The symposium will be from **12:30 p.m. to 2 p.m. on Thursday, October 6** at the Moscone Convention Center West in San Francisco. The fee for attending this event is \$40 which covers the cost of the lunch. For information about buying a table for eight go to www.ilsg.org/symposium. Your attendance also shows your support for the Institute's work in service to local officials in the areas of ethics civic engagement fiscal stewardship and housing/land use. League alumni (former city officials) are invited as well!

To sign up visit www.cacities.org/ac and either check the ILG Luncheon box on the regular League annual conference registration form or take advantage of the online registration process. Please note that you do not have to attend the entire conference to attend in this event.

Legislative Bill Action

The following are summaries of just a few of the legislative bills that are currently being acted upon by the League of California Cities. For more information about these and other bills, please **visit** the League website to access information about legislation, policy issues and related developments. You can track information on bills (www.cacities.org/billsearch), locate legislators and legislative committees, send letters to legislators or the media through the online Advocacy Center (www.cacities.org/advocacycenter), research League policy positions, access useful related links, and much more.

ENVIRONMENTAL

AB 771 (Saldana) Coastal Commission Ex Parte Communication In its previous version, **AB 771** would have prohibited virtually all ex parte communication with members of the Coastal Commission. While the League observed that this would prevent important two-way communication with coastal commissioners outside a public commission meeting, the author's office observed that the bill is in response to alleged serious violations by coastal commissioners of ex parte laws.

As amended on June 2, **AB 771** would increase the penalty imposed on coastal commissioners for knowingly violating the ex parte laws from \$7,500 to \$25,000. The author's office indicates that they will be amending the bill in the Senate to strengthen the notice provisions related to disclosing ex parte communications. **Staff Yvonne Hunter, Status Pending in the Assembly, Position Neutral**

SB 1059 (Escutia) Transmission Corridor Zones Land Use Preemption In last week's *Priority Focus*, we provided information on the Senate Floor vote on **SB 1059**, which would authorize the California Energy Commission to designate transmission corridor zones and override local land use authority of local governments. The actual final vote was 34-1, not 32-0 as we reported. The lone No vote was cast by Senator Dennis Hollingsworth. The League thanks Senator Hollingsworth for his vote.

City officials are reminded that **SB 1059** continues to move forward without any substantive amendments to address the serious problems it presents. Cities are encouraged to send letters of opposition unless amended to the Assembly Utilities and Commerce Committee, as well as to the Assembly Local Government Committee, which has requested a hearing on the bill as well. **Staff Yvonne Hunter, Status Pending in Assembly Utilities and Commerce and Assembly Local Government Committee (tentative), Position Oppose Unless Amended**

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WANT TO SEND A LETTER IN SUPPORT OF A LEAGUE POSITION? HERE'S WHO TO CALL

ASSEMBLY LOCAL GOVERNMENT (7)—
Salinas (Chair), Emmerson (Vice Chair), De La Torre, Houston, Lieber, Nation, and Wolk, 1020 N Street, Room 157, Phone (916) 319-3958

ASSEMBLY UTILITIES AND COMMERCE
(11)—Levine (Chair), Bogh (Vice-Chair), Baca, Blakeslee, Cohn, De La Torre, J. Horton, Keene, Montañez, Ridley-Thomas, and Wyland, Room 5136, Phone (916) 319-2083

PROP 42 from page 1

Mayors councilmembers and other local officials spoke about transportation problems in their respective cities ranging from road conditions to traffic congestion and how restoration of Prop 42 funds would improve their communities

In San Diego Stephen Finnegan the Automobile Club of Southern California's manager for transportation policy analysis and advocacy revealed that a recent federal study of the nation's roads and highways showed that 80 percent of the roads in San Diego County are in poor or mediocre condition

If those roads continue to deteriorate the cost of repairing them goes up exponentially so in the end we will all save dollars if we can use the money now he said

Brad Barnum of the San Diego Regional Chamber of Commerce agreed adding that a reduction in traffic problems will also help bolster the area economically

Less traffic congestion makes San Diego more attractive to potential businesses and employees he explained But we need adequate transportation infrastructure to support a growing population

City spokespersons at the press conferences included Modesto Mayor Jim Ridenour and Turlock Councilmember Billy Wallen at the Modesto press conference the Mayor of Lemon Grove Mary Sessom at the San Diego press conference Seaside Mayor Ralph Rubio at the Monterey press conference and Santa Barbara Councilmember

Roger Horton and Buellton Mayor Russ Hicks at the Santa Barbara conference Thanks to all these city officials for their help in getting the word out about the importance of fully funding Prop 42!



San Diego County Supervisor Ron Roberts along with city officials and business leaders address the media regarding their support for full restoration of Prop 42 transportation funds

The Road Information Program (TRIP) Report released just over two weeks ago reported that five out of the top-10 worst metropolitan areas are located in California – illustrating the impact that lack of adequate funding for transportation improvements is having on California's roadway system

The press conferences generated media coverage from most major outlets including local ABC NBC CBS and Univision television

affiliates and a variety of print newspaper and radio reporters

The most recent statewide survey of city and county needs for the local transportation system was from the SR 8 (Burton) report in 1999 The report found a backlog of \$11 billion in needed repairs – which due to maintenance deferrals is estimated at approximately \$13 billion today

Gov Schwarzenegger's May Revise budget proposed full Prop 42 funding (\$1.3 billion) for transportation projects including funds including \$381 million that will go to local governments for street road and transit projects Both the Assembly and Senate budget subcommittees adopted the governor's proposal However there are still major differences on the budget between the Democratic legislative leadership and the administration While discussions ensue on these issues city officials and their LOCAL partners believe that it is imperative that legislators pass a budget that includes full funding of Prop 42

TELECOM from page 1

City officials need to be ready for the change. The technological advances will potentially have major implications for city revenues, local authority over these services and economic development. Telecommunications infrastructure is about to become just as important as the infrastructure provided for water, sewer, transportation and other public facilities in the community.

Background

Currently, local governments are given authority to regulate utilities that use city rights-of-way to construct their infrastructure. This includes most utilities that deliver services to city residents such as water, electrical, and cable television services that are regulated through a franchise process.

Telephone companies have traditionally been outside of the city franchise process. But armed with business plans to develop the infrastructure to provide video services, telephone companies are now poised to deliver a service that looks a lot like the video services traditionally provided by cable television companies. Further complicating the picture, cable television companies are beginning to provide the telephone services traditionally provided by telephone companies, and electrical companies are assessing the opportunities for their entry into this exploding communications market.

Congress, California Legislature Debate Regulatory Issues

With all of these changes, Congress is expected to begin debates as early as this fall and into next year over a major rewrite of the 1996 Telecommunications Act. This act defines the authority and conditions under which local communities currently regulate the cable television industry.

This debate by Congress will undoubtedly have implications for how cities regulate the communications industry in California. Meanwhile, the debate

over a new regulatory scheme for California is beginning to heat up as we move into the summer months of the legislative session.

The debate in California started with a narrower attempt by a member of the telephone industry to change certain regulatory practices. Lloyd Levine, chairman, Assembly Public Utilities Committee, thought it was best to abandon this narrow fix approach in favor of a broader discussion about updating the state's current regulatory scheme to better match the revolutionary changes in communications technology.

For the past three to four weeks, Assemblymember Levine has conducted workshops for interested parties under the committee's direction. The League has been a participant in those meetings along with the cable television industry, the telephone companies, consumer groups, and non-profit organizations seeking balanced and non-discriminatory deployment of communications services. Essentially, all interested parties are present in these discussions.

After the most recent workshop, city representatives were asked to meet with the chairman and staff to talk about specific city issues in these discussions. The meeting was productive in its exchange of ideas. The League's Telecomunication Subcommittee is working on fine-tuning a policy document for the League. League policy committees will debate this in June, while the League Board will address the issue in July.

Emerging Issues

After the working group under the Assembly Public Utilities Committee met a number of times, some key questions emerged in the discussions. These questions promise to be a part of a draft proposal that is likely to be circulated in a couple of weeks. Those key questions include:

Continued on Page 7

o **State Parameters for Local Franchises**

One of the communications industry concerns can be described in general as uniformity. The argument is that the more uniform the franchise process is, the better it is for industry. It is a point that is consistent with the industry goal of speed to market. The contention is that the faster the industry gets to market, the more sound the industry business plan will be. This issue has both pros and cons from a local government perspective. It runs the potential of being preemptory of local authority over the local franchise process. On the other hand, it may speed negotiations, which can easily become prolonged on certain regulatory issues. As with any legislation, the details are important in how this issue develops.

o **Local Franchise Fees**

Local governments can currently collect a franchise fee from most utilities. It is a substantial amount of money on a statewide basis. Industry is raising the same uniformity issues when it comes to fees. The argument is that it would be easier to collect a fee at the state level and remit it back to local government. The local governments' experience with state collected and remitted fees/taxes (remember Vehicle License Fees?) is not a good one. Is there a compromise position on this issue? Will a franchise fee or some other fee apply to what are now the traditional telephone companies?

o **Public, Education and Government Channels (PEG)**

The requirement of PEG channels for the community is a critical concern to many communities and is one of the more difficult issues in local franchise negotiations. Sentiment in the legislature is strong that PEG channels are needed; the questions become how much and under what conditions? Is there a way to place a portion of the PEG requirements in state law but allow local flexibility in negotiations?

o **Build-Out of Communications Systems**

A key issue, again with good support in the legislature, is the need to build out the communications infrastructure in a manner that does not discriminate against one portion of the community over another. This is a consideration at the city level as well as at a statewide or regional level.

Politics/Timing

The politics of communications regulation or re-regulation are going to be complex. The industries are in a highly competitive environment where time is an important element, both to those industry members who want to rush to market and those who see delay as being on their side. Whatever the particular industry strategy, the regulation of the communications industry is going to change.

There has already been one very visible battle in the Texas Legislature this year. Two large phone companies tried to bypass the local franchise process through legislation pointing to the speed-to-market issue. The effort failed in a hard fought battle where the cable industry lined up with local governments to oppose the measure. In New Jersey, a similar battle is shaping up in that legislature.

Chairman Levine has stated his intent to produce a proposal for consideration of the legislature during this session. This means that a proposal should begin to take a more definite shape in the July/August timeframe. State budget negotiations will likely play into the timing for development of the proposal.

The chairman has indicated that local government and some of the industry will not like the first draft, but has asked that all parties of interest stay calm and continue to participate in the negotiations. The League has indicated to Chairman Levine that we intend to engage in a fairly aggressive

Continued on Page 8

BUDGET UPDATE from page 1

The League and city officials continued to work this week with their LOCAL coalition partners to stress to local media and their legislators the importance of preserving full funding of Proposition 42 for transportation projects including local street and road maintenance funding (see Local Officials Continue the Push for Full Prop 42 Funding) Both the Senate and the Assembly budget committees have approved this item as proposed in the governor's May Revision

We will post updated information on Budget Conference Committee actions on the League's website (www.cacities.org) as soon as information is available

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TELECOM from page 7

sive education process for our members to try and bring them up to speed as quickly as possible on a complex subject

Meanwhile Congress continues to prepare for its upcoming debates on this issue. If California can construct a regulatory scheme that makes sense for the state, it may play well in the congressional debates on the issue. On the other hand, Congress could exercise its authority to entirely preempt state and local laws in this field. However, it is too early to get any clear direction on the intent of Congress.

Action

The League strongly encourages cities to begin to raise this issue on your local radar screens. This could be a major end-of-the-session debate. Begin the preparations needed to deliver the message on the importance of local authority over this emerging regulatory issue, including the importance of the revenues from franchises for local municipal services.

When the draft legislation emerges, the League will attempt to get the language into your hands at city hall as soon as possible in order for you to make a thorough analysis of its potential impact. Please put this on your schedule to expect the language in late June and take the opportunity to thoroughly examine the proposal locally.

The League plans to schedule conference call information meetings for city officials once the legislation begins to emerge. Please look for notices as to days and times for the conference calls.